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APR 13 2007

Technology Center 2100

In re Application of:)
K. KITAMURA et al.)
Application No. 10/781,677) **DECISION ON PETITION**
Filed: February 20, 2004) **UNDER 37 CFR § 1.181**
For: METHOD AND DATA PROCESSING SYSTEM)
WITH DATA REPLICATION)

This is a decision on the Request for Withdrawal of Finality of Office Action filed on 07 March 2007. The Request has been treated as a petition under 37 C.F.R. § 1.181 to review the prematurity of Final rejection mailed on 07 February 2007.

The petition is **GRANTED**.

BACKGROUND

On 21 November 2006, applicant filed a RCE and an amendment to claims 1-2 and 22 and to add new claims 23-25.

On 07 February 2007, the examiner finally rejected all claims 1-2 and 22-25 in the first Office action immediately after filing a RCE.

On 07 March 2007, applicant filed a request for withdrawal of finality of Office Action.

RULES AND PROCEDURES

MPEP § 706.07(b) states in part that:

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application ...

MPEP § 706.07(h)(VIII) states that:

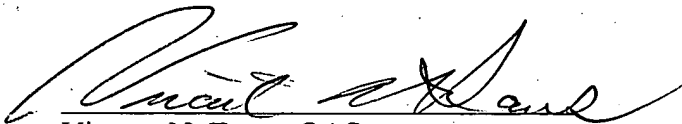
The action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP § 706.07(b) for making a first action final in a continuing application are met.

DECISION

A review of the file indicates that the rejection of claim 22 under 35 U.S.C. § 101 was newly introduced in the Final Office action mailed 07 February 2007 (immediately after filing RCE) and the amended claim 22 was not necessitated such a 101 rejection. Further, it appears that many new limitations have been added to claims 23-25 and these claims would be received a notice indicating "... require further search and/or consideration" if they were presented as an amendment after final Office action. Thus, claims 23-25 are not drawn to the same invention claimed in the earlier amended claims (prior to filing RCE), and would be refused to enter by the examiner if they had been presented in the application prior to filing the RCE of 21 November 2006.

For the above stated reasons, the petition is **GRANTED**. The final Office action mailed 07 February 2007 is hereby vacated and a new Non-final Office action will be mailed in due course.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.



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